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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,179	01/28/2004	Jonathan Schneider	P69465US0	9853

136 7590 07/28/2006

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WASHINGTON, DC 20004

EXAMINER
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KRISHNAMURTHY, RAMESH

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/765,179

Applicant(s)

SCHNEIDER, JONATHAN

Examiner

Ramesh Krishnamurthy

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 5 - 12 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5 - 7 and 10 is/are rejected.
- 7) ☒ Claim(s) 11 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

This office action is responsive to communications filed 05/05/2006.

**Claims 1, 3 and 5 – 12 are pending.**

1. Applicant's election without traverse of Species B in the reply filed on 12/15/2005 is acknowledged.

2. Claims 8 and 9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 12/15/05. It is noted that in the communications filed 12/10/05, claim 8 is also claimed to be generic to both the non-elected species A (Figs. 1 – 4) and the elected species B (Figs. 5 – 7). However, Claim 8 recites adjustment means for the torsion spring of claim 5. The elected Species B lacks such adjustment means for torsion spring.

3. It is noted that the status identifier for claims 8 and 9 should read withdrawn rather than original as presently stated.

4. **Claims 1, 3, 5 – 7 and 10 – 12 are pending.**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5 – 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 35 40 264 A1 in view of Darling (US 2,767,735).

The document DE '264 discloses a flap valve (2) for controlling air pressure within a protected space defined by walls (1), said flap valve comprising a valve frame (3) attachable to an opening made in said walls (1), valve flap (5) articulated at least indirectly to said frame and being subjectable to both sealing force which forces said valve against said frame and to an opening force which lifts a portion of the flap off said frame; said flap valve having a first position in which said protected space is sealed off from a contaminated environment, and a second position in which air from said protected space is allowed to escape into said environment via said opening.

The document DE '264 discloses the claimed invention with the exception of explicitly disclosing at least one spring at least indirectly attached to said valve flap and said valve frame.

Darling discloses a flap valve comprising torsion spring (31) disposed in a plane parallel to the plane of the frame to which the flap (22) is attached for the purpose of providing a compact arrangement while ensuring a positive check position of the valve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided in DE '264 a flap with springs arranged as in Darling for the purpose of providing a compact arrangement while ensuring a positive check position of the valve.

It is noted that Darling discloses means for adjusting the spring force exerted on the flap at Col. 3, line 72 – Col. 4, line 11). Regarding the recitation of a second spring having adjusting means in claim 10, it is noted that such a second spring is a duplication of an essential working part and the courts have held that mere duplication of the

essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of DE 35 40 264 A1 and Darling as applied to claims 1, 5 – 7 and 10 above, and further in view of Walton (US 5,494,244).

The combination of DE'264 and Schutzer et al. as set forth above discloses the claimed invention with the exception of explicitly disclosing the frame to be composed of two juxtapositioned plates attachable to opposite surface of the wall portions surrounding the opening.

Walton discloses (Fig. 4) an arrangement wherein an airflow control device comprising a mounting frame having two juxtapositioned plates attachable to opposite surfaces of wall portions surrounding said opening by clamping said plates together, for the purpose of avoiding any mounting operations such as drilling to be performed on the enclosure wall.

It would have been obvious to one ordinary skill in the art at the time the invention was made to have provided in the combination of DE '264 and Darling a mounting frame having two juxtapositioned plates attachable to opposite surfaces of wall portions surrounding said opening by clamping said plates together, for the purpose of avoiding any mounting operations such as drilling to be performed on the enclosure wall, as recognized by Walton.

Art Unit: 3753

8. Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

### ***Response to Arguments***

Applicant's arguments with respect to claims rejected above have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

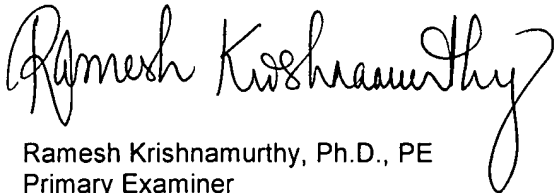
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramesh Krishnamurthy whose telephone number is (571) 272 – 4914. The examiner can normally be reached on Monday - Friday from 10:00 AM to 6:30 PM.

Art Unit: 3753

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel, can be reached on (571) 272 – 4929. The fax phone number for the organization where this application or proceeding is assigned is (571) 273 – 8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Ramesh Krishnamurthy". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Ramesh Krishnamurthy, Ph.D., PE  
Primary Examiner  
Art Unit 3753